

UNITED STATES DISTRICT COURT

DISTRICT OF RHODE ISLAND

CHRISTOPHER J. HIGHTOWER

v.

C.A. No. 93-0286-T

GEORGE A. VOSE, JR., et al

MEMORANDUM AND ORDER

This is an action brought by a state prisoner pursuant to 42 U.S.C. § 1983. It is presently before the Court for consideration of a Magistrate Judge's recommendation that the defendant's motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) be denied and that the action be stayed pending resolution by the Rhode Island Supreme Court of plaintiff's appeal from his murder conviction.

Background

In April 1993 Christopher Hightower was convicted of brutally murdering Ernest Brendel, his wife Alice Brendel and their child. Hightower's appeal from that conviction is pending before the Rhode Island Supreme Court.

Hightower brought this § 1983 action against various Rhode Island prison officials for alleged violations of his constitutional rights. In this suit, Hightower makes, essentially, two claims. First, he claims that during his criminal trial several defendants falsely accused him of conspiring to murder a prison guard and another inmate, and that news reports regarding those charges tainted the jury, thereby depriving him of his Sixth

Amendment right to a fair trial. Hightower's second claim is that the charges in question were the subject of a constitutionally deficient prison disciplinary proceeding that resulted in his being placed in punitive segregation for a period of thirty days. Specifically, he alleges that his rights under the so-called Morris Rules and the due process clause of the Fourteenth Amendment were violated because, among other things, he did not receive adequate notice of the charges, he was not sufficiently advised of the nature of the evidence against him, and the hearing panel was biased.

The defendants moved to dismiss, contending that plaintiff's suit was, in effect, a petition for habeas corpus and that he has not exhausted his state remedies. The Magistrate Judge has recommended denial of that motion. In addition, the Magistrate Judge has recommended that this action be stayed pending resolution of Hightower's appeal on the ground that any determinations made by this Court may impinge on the state criminal proceeding.

Discussion

It should be noted that the sole relief sought by Hightower is money damages, a declaration that the defendants have violated his Constitutional rights, and an injunction prohibiting the defendants from filing false charges against him and/or violating the Morris Rules. There is nothing in the amended complaint that could be construed as a demand for release from incarceration. Therefore,

the appropriate analysis is that applicable to § 1983 actions.

I. The Sixth Amendment Claim

Although there is no requirement of exhaustion under § 1983, a claim for damages based on allegations that the defendants caused the plaintiff to be wrongfully convicted of a crime is not cognizable under § 1983 unless and until the conviction has been invalidated or expunged. Heck v. Humphrey, -- U.S.--, 114 S.Ct. 2364 (1994). Otherwise, a defendant would be able to collaterally attack his conviction by means of a civil tort suit, thereby circumventing the exhaustion requirements applicable to habeas corpus petitions which are specifically designed for that purpose. Id. at pp. 2371-72.

That principle is dispositive of Hightower's Sixth Amendment claim. In order to prevail on that claim, one of the things that Hightower must demonstrate is that his state court conviction has been invalidated. At the present time he clearly is unable to make any such showing. Therefore, his Sixth Amendment claim should be dismissed.

II. The due process claims

When the determination of a § 1983 claim does not implicate the validity of a plaintiff's prior criminal conviction, the claim may be adjudicated unless otherwise barred. See, Heck v. Humphrey, 114 S.Ct. at 2372-73. In such cases, there is no need for the plaintiff to demonstrate that the conviction was invalid. Nor is

there any reason to invoke the exhaustion principles applicable to habeas corpus petitions.

In this case, there is no relationship between Hightower's criminal conviction and his claim that the disciplinary proceedings relating to the charges that he conspired to murder a guard and a fellow prisoner deprived him of procedural due process. Moreover, the fact that prison officials do not make even the most rudimentary record of such disciplinary proceedings makes it impossible to determine whether there is any basis for Hightower's claim. Absent any kind of a record, there is no way to determine what transpired at the hearing. Without that information, Hightower's claims cannot be disposed of summarily. Therefore, the motion to dismiss the due process claims should be denied.

Conclusion

For all of the foregoing reasons, the Magistrate Judge's report and recommendation is accepted in part and rejected in part and it is hereby ORDERED:

1. Plaintiff's Sixth Amendment claims are dismissed.
2. Defendant's motion to dismiss the remaining claims is denied.

IT IS SO ORDERED:

Ernest C. Torres
United States District Judge

Date: March , 1995